

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 16536 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - Whether this case involves a substantial question of law as to the interpretation of the
 - 4 constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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SOMABHAI KHENGARBHAI THAKKER - Petitioner(s)

Versus

JAYANTILAL KHENGARBHAI THAKKER & 2 - Respondent(s)

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Appearance :

MR HRIDAY BUCH for Petitioner(s) : 1,
MR VIREN G DAVE for Respondent(s) : 1,
RULE UNSERVED for Respondent(s) : 2,
RULE SERVED for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 14/09/2005

ORAL JUDGMENT

1. The petitioner-original defendant no.1 is before this Court being aggrieved of order dated 4th July 2005 passed by the learned Civil Judge (Junior Division),

Deodar below Exh.119 in Regular Civil Suit No.18 of 2003 (Old Suit No.15 of 1997) and prayed that the petitioner be permitted to file his written statement in the suit proceedings.

2. The facts of the case are that respondent no.1 herein-original plaintiff filed a suit for declaration that the properties mentioned in the plaint are of his ownership and he be awarded possession thereof relying on a will. The said suit was initially filed being Special Civil Suit No.15 of 1997 which was then transferred to Deodar Court and was re-numbered as Regular Civil Suit No.18 of 2003. It is the case of the present petitioner that all along defendant no.1 was under impression that the written statement to the suit is already filed but then it was learnt that what was filed was only reply to the injunction application and not the written statement to the suit. Therefore, an application was given seeking permission to file written statement. The said application is rejected.

3. The petitioner being aggrieved of that is before this Court. Taking into consideration the fact that filing of written statement will not cause any

prejudice to the original plaintiff, on the contrary filing of the written statement will facilitate the work of adjudicating the controversies involved in the suit and therefore, it is deemed fit that the present Special Civil Application be allowed.

Learned advocate Mr.Dave appearing for the respondent-original plaintiff vehemently opposed the relief sought for i.e. filing of the written statement mainly on the ground that it is at a belated stage that the written statement is sought to be filed. The learned advocate further submitted that not a single ground is pointed out for which the written statement could not be filed by the present petitioner.

4. The fact that the learned advocate for the respondent is not able to point out any prejudice being caused by filing of the Written Statement and in view of the fact that filing of Written Statement will facilitate the adjudication of the matter, the petition is allowed on condition that the petitioner shall pay cost of Rs.3500/- (Rupees three thousand and five hundred only) to respondent no.1 within four weeks from today. The cost be deposited before this Court which the learned

advocate for respondent no.1 is granted liberty to withdraw and pass on to respondent no.1. The learned advocate for the petitioner shall intimate when the deposit is made to the learned advocate for respondent no.1.

5. Taking into consideration the fact that the litigation is old enough, it is directed that the learned Judge shall give due priority to the hearing of the matter and decide the same as early as possible.

6. The petition is allowed. Rule is made absolute to the aforesaid extent.

(RAVI R. TRIPATHI, J.)